

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Definition of Markets for Purposes of the)	
Cable Television Broadcast Signal Carriage)	CS Docket No. 95-178
Rules)	

**ORDER ON RECONSIDERATION
AND SECOND REPORT AND ORDER**

Adopted: May 21, 1999

Released: May 26, 1999

By the Commission:

TABLE OF CONTENTS

	<u>Paragraph</u>
I. INTRODUCTION	1
II. BACKGROUND	5
III. RECONSIDERATION ISSUES	16
IV. FURTHER NOTICE OF PROPOSED RULEMAKING ISSUES	22
A. Steps to Ameliorate the Impact of the Market Definition Transition	22
B. Effect on Previously Decided Market Modifications	39
C. Improvement in the <i>Ad Hoc</i> Market Modification Process	44
1. Standardized Evidence Approach	44
2. Prima Facie Approach	53
3. General Approach to Modifying Markets	60
4. Maintaining the Channel Line-up Status Quo	63
V. ADMINISTRATIVE MATTERS	65
A. Market Entry Analysis	65
B. Final Regulatory Flexibility Analysis	66

C. Paperwork Reduction Act of 1995 Analysis	78
D. Ordering Clauses	79
List of Commenters and Petitioners for Reconsideration	Appendix A
Differences in Markets: ADI v. DMA	Appendix B
Rule Changes	Appendix C

I. INTRODUCTION

1. The *First Report and Order and Further Notice of Proposed Rulemaking* ("*First Order*") in this proceeding established new television market definitions for purposes of the cable television signal carriage and retransmission consent rules.¹ The Commission concluded that it was appropriate to change market definitions from Arbitron areas of dominant influence ("ADIs") to Nielsen Media Research designated market areas ("DMAs") for must-carry/retransmission consent elections. That action was necessary because the Arbitron market definition mechanism previously relied on was no longer available.² However, the Commission continued to use Arbitron's 1991-1992 *Television ADI Market Guide* designations for the 1996-1999 must-carry/retransmission consent election period and postponed the switch to DMAs until the third must-carry/retransmission consent cycle that is to commence on January 1, 2000.³

2. The *First Order* delayed the transition to DMAs because of concerns related to the transition from one market definition to another and the relationship of such a transition to the *ad hoc* market boundary change process provided for in Section 614(h) of the Communications Act.⁴ For this reason, the *Further Notice of Proposed Rulemaking* was issued to solicit additional information and provide parties an opportunity to further consider issues relating to the transition to market designations based on DMAs.⁵ It also sought comment on procedures for refining the Section 614(h) market modification process.⁶

3. Our task in this *Order on Reconsideration and Second Report and Order* is twofold. First, we consider the arguments raised in petitions for reconsideration of the *First Report and Order* filed by Blackstar of Ann Arbor, Inc., licensee of WBSX-TV (ch. 31--Ann Arbor, MI) ("WBSX-TV"), and by Costa de Oro Television, Inc., licensee of KSTV (ch. 57--Ventura, CA) ("KSTV-TV"), that ask for special

¹See *Definitions of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, CS Docket 95-178, 11 FCC Rcd 6201 (1996).

²*Id.* at 6221.

³*Id.* at 6222.

⁴*Id.* at 6224.

⁵*Id.* at 6225.

⁶*Id.* at 6225-26.

treatment for certain kinds of situations during the transition from ADIs to DMAs.⁷ For the reasons discussed below, we conclude that no special treatment for these petitioners is warranted.

4. Second, we address the issues raised in the *Further Notice*, and by the comments filed in response to that *Notice*, regarding possible ways to ease the transition for both broadcasters and cable operators, and the viewers they serve, as we move from an ADI to a DMA-based market structure. We also take this opportunity to improve the functioning of the *ad hoc* market modification process mandated by Section 614(h) of the Communications Act. Our principal goal is to reduce, to the extent feasible, cable subscriber confusion and disruption in viewing patterns that may arise because of the switch from ADIs to DMAs. Another goal is to clarify the procedures for determining markets for must carry purposes so that the administration of Section 614 by the Commission is efficient and workable.

II. BACKGROUND

5. Under provisions added to the Act by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), local commercial broadcast television stations may elect whether they will be carried by local cable television systems, and open video systems,⁸ under the mandatory carriage ("must-carry") or retransmission consent rules.⁹ A station electing must carry rights is entitled to insist on cable carriage in its local market. Should a local station choose retransmission consent, it and the cable system negotiate the terms of a carriage agreement and the station is permitted to receive compensation in return for carriage.¹⁰ Stations are required to make this election once every three years.¹¹ The current cycle commenced on January 1, 1997, with elections having been made by October 1, 1996.¹²

⁷Paxson Communications Corporation filed a Section 402(a) Petition for Review of the *First Report and Order* in the U.S. Court of Appeals for the District of Columbia Circuit. See *Paxson Communications Corporation v. FCC & USA*, Docket No. 96-1258. Subsequent to this filing, Paxson filed a motion for voluntary dismissal. The Court granted this Motion on February 10, 1999.

⁸We note that, pursuant to Sections 653(c)(1)(B) and (c)(2) of the Act, adopted as part of the *Telecommunications Act of 1996*, open video system operators are also subject to broadcast signal carriage requirements. See 47 U.S.C. §573(c)(1)(B) and (c)(2); see also 47 C.F.R. §76.1506 (broadcast signal carriage requirements for open video systems). Thus, rule changes made in this proceeding will affect OVS operators as well.

⁹Section 6 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), added a new Section 325(b) to the Communications Act of 1934, as amended, to provide commercial broadcast television stations with the opportunity to seek retransmission consent for carriage of their stations. It also provides for the triennial election process. 47 U.S.C. § 325(b). Section 614 was added to the Act by Section 4 of the 1992 Cable Act. It sets forth broadcasters' carriage rights under must carry and the obligation of cable operators to carry local commercial television stations. 47 U.S.C. § 534.

¹⁰A cable operator must receive retransmission consent to carry any commercial television station licensed to a market other than its local market. 47 U.S.C. § 325(b)(1). See also C.F.R. § 76.64(a).

¹¹47 U.S.C. § 325(b)(3)(B).

¹²47 C.F.R. § 76.64(f)(2).

6. For the purposes of these carriage rights, a station is considered local on all cable systems located in the same television market as the station. As enacted, Section 614(h)(1)(C) of the Act specifies that a station's market shall be determined in the manner provided in Section 73.3555(d)(3)(i) of the Commission's rules, in effect on May 1, 1991. Section 73.3555(d)(3)(i), now redesignated as Section 73.3555(e)(2)(i), is a separate rule concerned with broadcast station ownership issues that refers to Arbitron's ADIs.¹³ An ADI is a geographic market designation that defines each television market based on measured viewing patterns. Essentially, each county or portion of a county in the contiguous areas of the United States is allocated to a discrete market based on which home-market stations receive a preponderance of total viewing hours in the county.¹⁴

7. Moreover, under the "home county rule," the county in which the station's community of license is located is considered within its market.¹⁵ Under Arbitron, a station's city of license, and its home county, may be located in one ADI but assigned by Arbitron to another ADI for ratings reporting purposes. The station may assert its must carry rights, or elect retransmission consent, against cable operators in its home county and all of the cable operators in the ADI to which the station is assigned.

8. In addition to ADIs that generally define the area in which a station is entitled to insist on carriage, Section 614(h) of the Act directs the Commission to consider individual requests for changes through a market modification process, including the determination that particular communities may be part of more than one television market.¹⁶ The Act provides that the Commission may:

With respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of this section.¹⁷

9. Section 614(h)(1)(C)(ii) states that in deciding requests for market modifications, the Commission shall consider several factors:

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;

¹³47 C.F.R. § 73.3555(e)(2)(i) (1996).

¹⁴For the purposes of this calculation, both over-the-air and cable television viewing are included. Because of the topography involved, certain counties are divided into more than one sampling unit. Also, in certain circumstances, a station may have its home county assigned to an ADI even though it receives less than a preponderance of the audience in that county. For a more complete description of how counties are allocated, see Arbitron Ratings Company's *Description of Methodology*.

¹⁵47 C.F.R. § 76.55(e)(4).

¹⁶Section 614(h)(1)(c)(i), 47 U.S.C. § 534(h)(1)(C)(i).

¹⁷See 47 U.S.C. § 534(h)(1)(C)(i). The 1996 Act revised Section 614(h)(1)(C)(iv) to require the Commission to act on such requests within 120 days.

- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interests to the community; and
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.¹⁸

Section 76.59 of the rules provides that broadcast stations and cable operators shall submit requests for market modifications in accordance with the procedures for filing petitions for special relief.¹⁹

10. Arbitron discontinued its television ratings and research business after the Commission established the mechanism for determining a station's local market for purposes of the triennial must carry/retransmission consent election.²⁰ Thus, future editions of the publications referred to in the rules are no longer available and new procedures for defining market areas for must carry purposes had to be established.²¹

11. Historically, Arbitron and Nielsen have been the primary national television ratings services. Conceptually, their market designations -- ADIs and DMAs -- are the same. They both use audience survey information from cable and noncable households to determine the assignment of counties to local television markets based on the market whose stations receive the largest share of viewing in the county.²² The differences in their assignments of specific counties to particular markets reflect a number of factors, including slightly different methodologies and criteria²³ as well as normal sampling and statistical variations. Each company also has a policy for determining what constitutes a separate market based on a complex statistical formula.²⁴ In addition, these services reserve the right to take into account

¹⁸Section 614(h)(1)(C)(ii), 47 U.S.C. § 534(h)(1)(C)(ii). See also *Report and Order in MM Docket No. 92-259*, 8 FCC Rcd 2965 (1993) at 2976-2977.

¹⁹47 C.F.R. § 76.7. The Commission revised the pleading and complaint rules last year. The broadcast signal carriage complaint rules are now consolidated in Section 76.61 and take effect later this year. See *1998 Biennial Regulatory Review: Part 76-Cable Television Service Pleading and Complaint Rules*, CS Docket No. 98-54, FCC 98-348 (rel. Jan. 8, 1999).

²⁰11 FCC Rcd at 6206.

²¹*Id.*

²²Arbitron Ratings Company, *Description of Methodology*; Nielsen Media Research, *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

²³For example, Arbitron surveys over a total week defined as Sunday-Saturday, 6 a.m. to 2 a.m., and Nielsen's definition of total week is based on viewing from Monday-Sunday, 7a.m.-1 a.m.

²⁴For example, Arbitron considers some areas, such as Hagerstown, Maryland, or Sarasota, Florida, as separate markets, compared to Nielsen, which includes Hagerstown in the Washington, D.C. DMA and Sarasota in the Tampa DMA. See Arbitron Ratings Company, *Description of Methodology*; Nielsen Media Research, *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

other considerations.²⁵ Nielsen, in particular, "reserves the right not to create a DMA if there is a lack of sufficient financial support of Nielsen Service in that potential DMA."²⁶

12. Nielsen has established a system to determine which stations are considered "local" for ratings reporting purposes. This is the "Market-Of-Origin" assignment process and involves several statistical calculations based upon viewership and other factors.²⁷ However, a station may petition Nielsen to change its Market-Of-Origin assignment if both its transmitter and the majority of its Grade B service contour are located in a different DMA than the DMA in which the station's community of license is located. Such a petition must include relevant information on which the petitioning station bases its request for a change in Market-Of-Origin including, but not limited to, community of license, present transmitter location, signal coverage (including FCC coverage maps), audience data from previous measurements, and/or competitive considerations. Nielsen reserves the right to use its best judgment based upon the information available to it in considering whether the change sought by the petition reflects the reality of the market affected. The station's assignment is then made available in Nielsen's *Directory of Stations* publication.²⁸ Thus, it appears that the home county rule, as described above, applies in the DMA context as it had in the ADI context.

13. In the *First Order*, the Commission concluded that Nielsen's DMA market assignments provide the most accurate method for determining the areas serviced by local stations, recognizing that over time the 1992-92 ADI market list, if relied upon, would become outdated.²⁹ Moreover, we continued to believe that our 1993 decision to use updated market designations for each election cycle to account for changing markets was appropriate. Nielsen currently provides the only generally recognized source of information on television markets that would permit us to retain this policy.³⁰ Thus, we

²⁵For example, Arbitron states the it "reserves the right to exercise its professional judgment in county assignment policies in the case of counties with unusual geographic, topographic, ethnic, historical marketing or other exceptional circumstances." Arbitron Rating Company, *Description of Methodology*, January 1989, at 4.

²⁶ Nielsen Media Research, *Nielsen Station Index: Methodology Techniques and Data Interpretation*, 1994-95 at 2.

²⁷For Nielsen's Market-Of-Origin assignment, a broadcast station is designated as "local" and is generally assigned to the Nielsen market of the DMA in which its community of license is located. A broadcast station is "local" to only one Nielsen market. See *1997-1998 NSI Reference Supplement* at 47.

²⁸Nielsen has indicated that, for the purposes of the 1997-1998 assignment list, there were five stations located in one DMA but currently assigned as "local" to another DMA: (1) WOGX--located in the Orlando DMA but assigned to the Gainesville DMA; (2) WGRB--located in the Louisville DMA but assigned to the Bowling Green DMA; (3) WGVP--located in the Tallahassee DMA but assigned to the Albany, GA DMA; (4) WNTZ--located in the Baton Rouge DMA but assigned to the Alexandria DMA; and (5) WNPA--located in the Johnstown/Altoona DMA but assigned to the Pittsburgh DMA.

²⁹11 FCC Rcd at 6220.

³⁰*Id.*

concluded that Nielsen's DMA market designations will provide the best method of "delineat[ing] television markets based on viewing patterns"³¹ in the future.³²

14. We observed, however, that a shift to a DMA-based market definition standard could result in some stations currently on local cable systems being replaced,³³ some other programming services (i.e., cable networks) being dropped to accommodate situations where the number of stations entitled to carriage increases, and some channel line-ups needing to be reconfigured to accommodate the channel positioning requests of stations with new must-carry rights.³⁴ The Commission also voiced concern about the impact the change to DMAs would have on the Section 614(h) market modification decisions already in force. The consensus of commenters was that prior market modification decisions should remain in effect. It was unclear, however, whether cable operators could face conflicting obligations or be subject to carriage of signals from multiple markets based on a revised market standard when these modifications are considered in conjunction with a new market definition.³⁵ We did not receive any information regarding the effect that such decisions, in conjunction with a change to a DMA standard, would have on the must-carry obligations of cable operators. In addition, we were unable to determine the burden on the Commission to remedy conflicts that might result from an immediate switch to DMAs.³⁶ The complexity of such situations and the administrative burden on the Commission and others to resolve possible conflicts could, the Commission believed, disrupt the orderly provision of local television service to subscribers.³⁷

15. Based on these considerations, the Commission postponed the switch in market designation until the next must-carry/retransmission consent takes effect on January 1, 2000, to ensure that potential transitional problems could be addressed.³⁸ We reasoned that the phased-in approach would assist parties who expressed concerns that a switch in market definitions would result in administrative burdens and costs for cable operators, including small cable operators, and would impede the entry of new market entrants, such as local exchange carriers planning to operate cable systems under Title VI or the OVS provisions.³⁹ Thus, the Commission decided to continue to use the 1991-1992 ADI market list for the

³¹Section 614(h)(1)(C), 47 U.S.C. § 534(h)(1)(C), as amended by the 1996 Act.

³²11 FCC Rcd at 6220.

³³According to Nielsen, 29 counties were assigned to different DMAs from the 1996-97 to the 1997-98 television season. In 1996-97, 36 counties changed DMAs from 1995-96. See Nielsen Media Research, DMA Status & County Assignment Changes, 1996-97 and 1997-98.

³⁴11 FCC Rcd at 6220.

³⁵*Id.*

³⁶*Id.* at 6222.

³⁷*Id.*

³⁸*Id.*

³⁹*Id.*

1996 election and to establish a framework that uses updated DMA markets lists for the 1999 and subsequent elections.⁴⁰

III. RECONSIDERATION ISSUES

16. Two parties, Blackstar of Ann Arbor, Inc., licensee of WBSX-TV (channel 31, Ann Arbor, Michigan) ("WBSX-TV") and Costa de Oro Television, Inc., licensee of KSTV (channel 57, Ventura, California) ("KSTV-TV") filed petitions for reconsideration of the *First Order* generally arguing that the Commission did not adequately consider updated market information, unique to their situations, when considering the transition from ADIs to DMAs.

17. WBSX-TV asks the Commission to clarify that, for the purposes of the 1996 must carry/retransmission consent election, stations would be permitted to use updated ADI market designations where reliable evidence is available to substantiate what Arbitron's designation would have been for the 1996 must carry election.⁴¹ The station explains that the decision to employ the 1991-1992 ADI data for the initial election in 1993 deprived it of the opportunity to correct its ADI designation in time to be considered part of the Detroit ADI.⁴² Both Nielsen and Arbitron subsequently granted the station's request to assign it to the Detroit ADI because its home county was inside the Detroit television market.⁴³

18. KSTV-TV explains that the 1991-1992 ADI market guide contains a reference to the station being assigned to the Santa Barbara ADI rather than the Los Angeles ADI, the latter being the ADI in which the station's home county is located.⁴⁴ KSTV-TV argues that it never subscribed to Arbitron and never knew about the reference until it made must carry requests to local cable television systems.⁴⁵ KSTV-TV states that the cable operators refused to carry the station and that complaints regarding carriage within the Los Angeles ADI were denied based on the station's assignment to the Santa Barbara ADI by Arbitron.⁴⁶ KSTV-TV states that Nielsen, unlike Arbitron, considers the station to be in the Los Angeles market, without exception.⁴⁷

⁴⁰*Id.*

⁴¹WBSX-TV Petition at 2.

⁴²*Id.* at 3.

⁴³*Id.*

⁴⁴KSTV-TV Petition at 2.

⁴⁵*Id.* at 3.

⁴⁶*Id.* See *Costa de Oro Television Complaints*, 10 FCC Rcd 9468 (Cab. Serv. Bur. 1995), 11 FCC Rcd 503 (Cab. Serv. Bur. 1996), and 11 FCC Rcd 505 (Cable. Serv. Bur. 1996), *aff'd on Application for Review*, 12 FCC Rcd 22464 (1997) (all dismissing KSTV-TV's must carry complaints against Los Angeles ADI cable systems because the station was assigned to the Santa Barbara ADI by Arbitron). Costa de Oro Television, Inc. filed a Petition for Review in the United States Court of Appeals for the D.C. Circuit on January 16, 1998 (Dkt. No. 98-1025). A decision in this case is still pending.

⁴⁷KSTV-TV Petition at 3.

19. In opposition to these petitions, the National Cable Television Association ("NCTA") argues that both stations raise discrete issues with respect to the 1991-1992 Arbitron list that do not warrant across-the-board revisions to the rules that they advocate.⁴⁸ NCTA comments that to the extent either or both stations raise concerns about the accuracy of their particular market designations, the Commission market modification process provides them with a remedy.⁴⁹

20. In reply, WBSX-TV asserts that NCTA has not attempted to rebut its core argument--that refusal to permit broadcasters to rely on updated market information would be arbitrary and irrational and would constitute an unexplained departure from existing policy.⁵⁰ WBSX-TV asserts that it has not requested a broad revision of the rules, as NCTA suggests, rather it has requested a narrow modification of the *First Order*.⁵¹

21. We believe there is no reason to make special exceptions for these two stations. The individual circumstances that apply to WBSX-TV and KSTV-TV are most appropriately dealt with through the market modification process, which takes into consideration their future DMA assignments. Both stations have used the market modification process to seek significant expansion of their ADI markets for must carry purposes. WBSX-TV has already added 55 communities to its current ADI,⁵² and KSTV-TV has added 22 communities.⁵³ The Commission has specifically indicated that information regarding DMAs could be useful in resolving individual ad hoc market modification requests filed pursuant to Section 614(h).⁵⁴ The stations may therefore use the modification process to change their DMAs, in the future, if the situation so warrants.

⁴⁸NCTA Opposition at 3.

⁴⁹*Id.* We note that WBSX-TV filed a market modification request asking to switch its ADI from Lansing to Detroit, or in the alternative, modify its current market to include over fifty Detroit ADI communities. The Cable Services Bureau denied the former request but granted the latter request. See *Blackstar of Ann Arbor, Inc.*, 11 FCC Rcd 14992 (1996). KSTV-TV also filed a request of modify its market to add 46 communities in Los Angeles County and 14 communities in Orange Country. KSTV-TV's request was granted in part and denied in part. See 13 FCC Rcd 4360 (Cab. Serv. Bur. 1998).

⁵⁰WBSX-TV Reply at 2.

⁵¹*Id.* at 4.

⁵²*Blackstar of Ann Arbor, supra*, 11 FCC Rcd at 15001-02.

⁵³*Costa de Oro Television, Inc.*, See 13 FCC Rcd 4360. Petitions for reconsideration are still pending in this case.

⁵⁴*Definitions of Markets for Purposes of the Cable Television Mandatory Television Broadcast Signal Carriage Rules*, CS Docket 95-178, 11 FCC Rcd 6223.

IV. FURTHER NOTICE OF PROPOSED RULEMAKING ISSUES

A. Steps to Ameliorate the Impact of the Market Definition Transition

22. The *Further Notice of Proposed Rulemaking* sought comment on mechanisms for facilitating the transition from a market definition system based on ADIs to one based on DMAs. Commenters were asked to consider whether special provisions should be made for particular types of systems (e.g., systems with fewer than a specified number of subscribers) to minimize the disruptions that could occur due to a switch to DMAs.⁵⁵ The Commission is also concerned about the potential impact on consumers who are cable subscribers.

23. The Post Company ("Post"), licensee of KIFI-TV (Channel 8--Idaho Falls, Idaho), expresses concern about the impact on television stations when the cable systems previously located in that station's former ADI market will now be considered to be in a new DMA. As a consequence, Post argues that a television station that has employed specialized signal delivery equipment may lose its investment as a consequence of shifting to the DMA market.⁵⁶ That station, it argues, stands to lose a significant investment if it previously provided expensive equipment to ensure reception at the headend of the cable system in its old market.⁵⁷ Accordingly, Post urges the Commission to modify Section 76.55(e) so that stations faced with this predicament may continue to demand carriage on those systems for which they installed equipment to ensure delivery a good quality signal.⁵⁸

24. NCTA, in its reply comments, contends that Post's proposal would subject cable operators to must carry obligations not only from broadcasters within whose DMA market they would be located, but would grandfather carriage of broadcasters from former ADI markets as well.⁵⁹ NCTA also contends that broadcasters would seek to use this proceeding as a means of forcing carriage on systems beyond their area of license.⁶⁰ The Small Cable Business Association ("SCBA") similarly argues that Post's proposal imposes untenable burdens on small cable operators, contending that small operators should not be made to bear the burdens imposed by must carry demands from both grandfathered stations and new DMA located stations.⁶¹ SCBA argues that small cable operators should be exempt from any modification of Section 76.55(e), as Post suggests, to permit stations to retain must carry status on those systems for which the station was previously required to install equipment to ensure reception.⁶²

⁵⁵11 FCC Rcd at 6224-25.

⁵⁶Post Comments at 2.

⁵⁷*Id.*

⁵⁸*Id.* at 3.

⁵⁹NCTA Comments at 2-3.

⁶⁰*Id.*

⁶¹SCBA Comments at 1-2.

⁶²SCBA Comments at 3-4.

25. Post, in its reply comments, raises the issue of cable copyright.⁶³ Post is concerned that a local station under the ADI framework may be considered a distant station under the DMA framework and would be required to indemnify a cable operator for copyright liability if in fact the station was imported into another market by an operator. Post proposes that the Commission modify the definition of a "local commercial broadcast television market" in Section 76.55(e) of the rules so that stations, in limited circumstances, can continue to demand carriage on cable systems which are no longer in their television markets. A modification of the rule would eliminate the possibility of increased copyright liability and permit cable systems to continue to carry the grandfathered stations without increased liability.⁶⁴

26. Post raises concerns about Nielsen's market determination process.⁶⁵ It states that Nielsen's methodology in establishing DMAs is highly guarded, and lacking such information on the mechanics of the market assignment process, it is difficult to gauge the effect Nielsen's policies will have on market determinations.⁶⁶ Post argues that Nielsen's petitioning process to alter markets will harm smaller stations which are not in a position to manipulate the DMA assignments to their advantage.⁶⁷ In addition, Post asserts that Nielsen's petitioning process conflicts with the Commission's market modification process.⁶⁸ Post contends that stations can avoid the Commission's market modification process altogether by petitioning Nielsen directly, or they can undercut the Commission process by petitioning Nielsen after receiving an adverse decision from the Commission.

27. The comments of Southern Broadcast Corporation of Sarasota ("Southern") present a related issue. Southern contends that Nielsen's process and criteria for creating DMAs and assigning stations make it virtually impossible for small television markets existing on the periphery of larger television markets to become their own DMA.⁶⁹ Southern explains that its station, WWSB-TV (Channel 40 -Sarasota, FL) is located in the Sarasota ADI. This ADI is adjacent to the Tampa-St. Petersburg ADI, but Nielsen has folded Sarasota into the Tampa-St Petersburg-Sarasota DMA.⁷⁰ Southern argues that Nielsen aggregates small market television stations into the larger market, regardless of local service to their own communities, and it fears that such a process will have a harmful impact on its non-network

⁶³Post Reply Comments at 3-4.

⁶⁴*Id.* at 5.

⁶⁵In the *Further Notice* we recognized that some DMA assignments are based on considerations other than viewing patterns and requested comment on such situations, their effect on stations' must carry rights and cable systems' signal carriage obligations, and whether additional rules are needed to provide for such cases, either as a transition mechanism or once the DMA standard becomes effective. 11 FCC Rcd at 6224-25.

⁶⁶Post Comments at 5.

⁶⁷*Id.* at 6.

⁶⁸*Id.* at 7.

⁶⁹Southern Comments at 2.

⁷⁰*Id.*

territorial exclusivity arrangements and access to non-network programs.⁷¹ Southern does not specify whether or not Nielsen's assignment is based on viewing patterns or other considerations, but suggests that the Commission should allow small market stations, such as WWSB-TV, to opt out of the DMA market for purposes of non-network territorial exclusivity arrangements.⁷²

28. We are not making the change suggested by Southern. Its concern about non-network territorial exclusivity arrangements appears to be misplaced and are better left addressed in Gen. Docket No. 87-24, which focuses on the network rules of concern to Southern. The change from ADIs to DMAs for must carry purposes in Section 76.55 affects neither of the market listings referenced in Section 73.658(m) for purposes of territorial exclusivity in non-network arrangements. Section 73.658(m) provides that exclusivity may be secured in hyphenated markets included in the top 100 markets listed in Section 76.51 or, if the market in question is not in the top 100 list, then Section 73.658(m) makes reference to the ARB Television Market Analysis. Even though Arbitron's television market analysis is no longer published, there has been no change in the reference, and the Nielsen DMA list has not been substituted theretofore. Because Section 73.658(m) refers to Section 76.51, the reference to DMAs in Section 76.55 is not relevant to territorial exclusivity in non-network arrangements, and Southern's objection to the switch to DMAs on this basis is unwarranted.

29. The SCBA states that a shift from ADIs to DMAs will require certain small cable systems to carry as many as ten new must-carry stations, resulting in "intense" operational disruption and disproportionately high per subscriber compliance costs, particularly for the small systems that straddle DMA borders where the systems serve counties in more than one DMA.⁷³ As an example, SCBA describes the anticipated change in Cleburne County, Alabama, which is in the Birmingham, Alabama ADI, but in the Atlanta, Georgia DMA. The cable systems serving communities in Cleburne County are currently required to carry five Birmingham stations and one Gadsden, Alabama station. After the transition to DMAs, the Cleburne cable systems will be obligated instead to carry seven Atlanta and three other Georgia stations. The Cleburne cable systems, according to SCBA, currently carry only two of the

⁷¹*Id.* at 1-2. Southern has also requested that comments it initially filed in *Amendment of Parts 73 and 76 of the Commission's Rules Relating to Program Exclusivity in the Cable and Broadcast Industries*, Gen. Docket No. 87-24, be incorporated by reference in the current proceeding. Southern opposes the Commission's eliminating or modifying the restrictions on territorial exclusivity in non-network programming arrangements.

The Commission's territorial rules state that no television station shall enter into any contract, arrangement, or understanding, expressed or implied; with a non-network program producer, distributor, or supplier, or other person; which prevents or hinders another television station located in a community over 35 miles away, as determined by the reference points contained in Section 76.53, from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person [.] 47 C.F.R. §73.658(m).

⁷²It appears that Southern is most concerned that changing from ADIs to DMAs will result in the Commission revising Section 76.51 to include Sarasota with Tampa and St. Petersburg in the same market.

⁷³SCBA Comments at 1, 2, 6 and 10. These costs will be associated with must carry identification and copyright liability, signal measurement costs, headend equipment costs, and subscriber notices and channel card revisions. SCBA estimates that the addition of a single must-carry station costs a small operator between \$5,100 and \$6,650, plus the attendant subscriber confusion and frustration resulting from a change in channels on the cable system.

Atlanta stations, WTBS and WXIA.⁷⁴ SCBA asserts that the costs of determining the validity of must-carry demands, testing signal strength, purchasing new signal processors, and notifying subscribers, could cost a system over \$40,000.⁷⁵ SCBA proposes that small cable operators, as defined in the Commission's "Small System Order,"⁷⁶ be allowed to "opt out" of the change in market definitions until the 2002 election period.⁷⁷ This would give the system an additional three years to invest in upgrades without the burdens and costs of wholesale changes in must-carry obligations. NCTA endorses these SCBA proposals.⁷⁸

30. Alternatively, SCBA proposes that a small operator could decline carriage of a commercial broadcast station having attained must-carry status due to a shift in DMAs when such carriage would require deletion or repositioning of existing programming.⁷⁹ Where channel capacity is available or becomes available due to system upgrades or deletion of other signals, the small operator would be required to carry the DMA-based must-carry station.⁸⁰ In addition, SCBA suggests that small systems also be allowed reimbursement from DMA-based must-carry stations for additional necessary headend equipment, costs of signal quality measurement, and subscriber notification and channel card changes. These two proposals could stand alone or as an alternative to the suggested "opt out" rules.⁸¹

31. The NCTA asserts that the ultimate goal in this proceeding should be to reduce disruptions for cable subscribers. NCTA asserts that sufficient lead time is necessary for operators to rearrange signal complements, evaluate must carry demands, and notify subscribers of channel line up changes.⁸² NCTA contends that the three month period between elections on October 1, 1999 and implementation on

⁷⁴SCBA Comments at 4. There actually appears to be more than one cable system providing service in Cleburne County. The 1998 *Television Factbook, Cable Services Volume*, indicates that the Hollis Crossroads system (182 subscribers) carries only one signal from Atlanta which is received by satellite (WTBS). ALTV's reply comments indicate that the Heflin system carries four Atlanta stations. ALTV Reply Comments at 4. The NAB's reply comments indicate that two of the three operators carry at least four of the ten stations whose carriage would be required if the system were in the Atlanta market. NAB reply Comments at 2 and Appendix A, p. 4.

⁷⁵SCBA Comments at 10.

⁷⁶*Sixth Report and Order and Eleventh Order on Reconsideration*, MM Docket No. 92-266 and 93-215, FCC 95-196, 10 FCC Rcd 7393, 7406 (1996) (definition of small system includes any system serving 15,000 or fewer subscribers for purposes of rate regulation).

⁷⁷SCBA Comments at 11-12.

⁷⁸NCTA Reply Comments at 3.

⁷⁹SCBA Comments at 12-13.

⁸⁰*Id.*

⁸¹*Id.*

⁸²NCTA Comments at 2.

January 1, 2000 is an insufficient amount of time for an orderly switchout. NCTA proposes that the Commission provide an additional 120 days for the transition.⁸³

32. The Association of Local Television Stations, Inc. ("ALTV") contends, in its reply comments, that a special transition process from ADIs to DMAs is not needed as the record does not support a conclusion that widespread disruption of established carriage patterns will impose inordinate or undue burdens on any party.⁸⁴ ALTV argues that the systems required to add new local signals already carry some of the signals and will be able to drop some of the signals that will no longer be considered local, thus ameliorating concerns about new carriage obligations.⁸⁵ Moreover, any comments which request that the Commission delay the transition have no merit because all affected parties have had time to anticipate, plan, and effectuate any changes occasioned by the switch to DMAs.⁸⁶ ALTV also argues that SCBA's suggestion that local television stations indemnify small cable operators for the cost of carrying the new local stations, is contrary to the statutory prohibition on requiring stations to pay cable systems for mandatory carriage.⁸⁷

33. The National Association of Broadcasters ("NAB") agrees with ALTV. In reply comments, it argues that the Commission should reject SCBA's requests for transitional rules for small cable systems.⁸⁸ NAB contends that allowing small cable systems to "opt out" of their must carry obligations by not using DMA boundaries in the year 2000 will have an impact on certain television stations, and that small systems should not be afforded special treatment in the DMA context, as they were not afforded such treatment with respect to the initial implementation of the must carry rules.⁸⁹ NAB also asserts that SCBA has overstated the impact of the switch to DMAs on smaller cable systems. NAB notes that some of the small systems are already carrying the stations in their DMA⁹⁰ and that some of the other stations in the DMA will be some distance away and will not be willing to provide a good quality signal

⁸³*Id.*

⁸⁴ALTV Reply Comments at 2.

⁸⁵*Id.* at 4. In response to SCBA's specific examples of communities that will be affected by the change from ADIs to DMAs, ALTV notes that the Moorfield cable system in Hardy County, West Virginia currently carries three Washington, D.C. stations, and, as noted above, that the Hefflin cable system in Cleburne County, Alabama currently carries four Atlanta stations.

⁸⁶*Id.* at 5. *See also* NAB Reply Comments at 6-7 (conversion to DMAs was first signaled by the Commission in 1995, giving cable operators five years by 2000 to plan for the conversion); and Paxson Reply Comments at 11-13 (no need to postpone conversion to DMAs, the DMA assignments will be available to cable operators for two years before the must carry/retransmission consent election in October, 1999).

⁸⁷*Id.* at n. 14 *citing* 47 U.S.C. § 534(b)(10).

⁸⁸NAB Reply Comments at 6-8.

⁸⁹*Id.*

⁹⁰NAB Reply Comments at 2 and Appendix A, p. 4 ("Of course, the DMA signals will be *in lieu of* those required under the ADI, most often resulting in a *net* increase of, at most, only one or two stations that would have to be carried." Emphasis in original.)

to the cable system headends.⁹¹ NAB also notes that the impact on cable operators will be moderate because the must carry rules provide that cable systems need not carry duplicating signals,⁹² more than one affiliate of the same network, stations that opt for retransmission consent, or stations that fail to provide a good quality signal to the cable headend.⁹³ NAB further notes that SCBA fails to list those cable systems whose must carry obligations will be reduced by the transition to DMAs.⁹⁴ NAB also disputes SCBA's assessment of the time and expense necessary to assess the validity of must carry claims, noting for example, that one need only refer to Nielsen's DMA listings to determine which stations are eligible for carriage.⁹⁵ In addition, NAB asserts that television stations presently competing in DMA markets would be harmed by further delaying the transition to DMAs because they will continue to be denied carriage in the markets in which they are evaluated for purposes of selling advertising time.⁹⁶

34. We agree with those commenters that continue to express concern about the potentially disruptive consequences of switching to DMAs. A comparison of the ADI markets currently used with the DMA markets that will be used after the current election cycle is over, reveals that 135 counties change markets because of the switch from ADIs to DMAs. A sampling of these counties suggests that, in certain instances, the changes will have serious impact, even though a relatively small number of cable systems and broadcasters would be involved. And, although a strong case could be made for reversing the market shift based on the *ad hoc* market evaluation factors contained in Section 614(h), this statutory mechanism, in and of itself, may not significantly lessen the impact of the change. Thus, we believe that some general relief is warranted.⁹⁷

⁹¹*Id.* at Appendix A, pp. 1-2. We note by example that Cleburne, Alabama is outside the predicted Grade B contour of five of the ten stations in the DMA that Cleburne cable systems might be obligated to carry. See *Warren's Television and Cable Factbook*, 1997.

⁹²Section 614(b)(2)(B) of the Communications Act, however, provides that if the cable operator elects to carry an affiliate of a broadcast network, such a cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in Section 76.53 of the Commission's rules, is closest to the principal headend of the cable system.

⁹³*Id.* at 3 citing 47 C.F.R. § 76.55(b)(5).

⁹⁴*Id.* NAB offers Volunteer Cablevision in Moore County, Tennessee (230 subscribers) and Cablevision in DeKalb County, Missouri (1,298) as examples of systems whose carriage obligations are reduced by the transition and notes that both systems currently carry some of the stations from the new market. *Id.* at 3-4.

⁹⁵*Id.* at 5.

⁹⁶*Id.* at 7.

⁹⁷We note that the change in market definition from ADI to DMA will take effect on January 1, 2000, which prompts us to consider on our own motion whether this timing would create a Year 2000 ("Y2K") problem, particularly for the cable systems that will experience carriage or channel line-up changes. Commission staff has confirmed with relevant industry representatives that cable systems' headend signal processing equipment is not dependent on date or time, and, therefore, the market definition change would not raise Y2K considerations. *Ex parte* conversation with Andy Scott, Director of Engineering, National Cable Television Association, May 19, 1999.

35. A cable system currently within a particular station's ADI, but outside that station's DMA, may want to continue carrying that station after the transition to DMAs because the station serves the local interests of its subscribers. We believe that when the cable system wants to carry a particular station, it is a strong indication that the community it serves continues to be within the station's local market notwithstanding the change in market definition. Therefore, to minimize programming disruptions, we adopt a policy whereby a cable system within a television station's ADI (but outside its DMA) that currently carries the station on its channel line-up may continue to carry the station, without being subject to copyright liability,⁹⁸ even after the transition to DMAs. We note that the Act's one-third channel capacity cap,⁹⁹ and related closest network affiliate provision,¹⁰⁰ apply in this particular situation. This policy adheres to the Commission's goals of providing cable subscribers with television programming that serves the interests of localism, while also reducing the possibility of channel line-up disruptions and subsequent subscriber confusion. Our approach also takes into account the Commission's need for current market information that only Nielsen can provide while, at the same time, ensuring that cable subscribers are not deprived of valued broadcast services. In these cases, the commercial television station is, and will continue to be, local with respect to this cable system, in conformance with Section 76.55 of the Commission's rules.¹⁰¹ This policy applies to stations that elected retransmission consent or must carry.

36. As stated earlier, one of the principal goals in this proceeding is to reduce channel line-up disruptions whenever possible. The rule changes we are adopting, which permit individual fact-specific Commission adjustments prior to the shift to DMAs, seek to accomplish that goal. The new rules, amending Sections 76.55(e) and 76.59, will include the following features:

- In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that change from one market to another will be permitted to treat their systems as either in the new market, or with respect to the specific stations carried prior to the market change, as in both markets.

⁹⁸In general circumstances, if a cable operator chooses to import a distant broadcast signal, it would be subject to copyright payments under Section 111 of the Copyright Act for each signal carried. See 17 U.S.C. § 111.

⁹⁹A cable operator of a cable system with more than 12 usable activated channels shall carry the signals of local commercial television stations, up to one-third of the aggregate number of usable activated channels of such system. 47 U.S.C. § 534(b)(1)(B).

¹⁰⁰If the cable operator elects to carry an affiliate of a broadcast network, such cable operator shall carry the affiliate of such broadcast network whose city of license reference point, as defined in Section 76.53 of the Commission's rules, is the closest to the principal headend of the cable system. 47 U.S.C. § 534(b)(2)(B).

¹⁰¹It is statutorily provided that copyright law tracks the Commission's market determinations for broadcast signal carriage purposes. See 17 U.S.C. § 111(f) ("The 'local service area of a primary transmitter,' in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to the rules, regulations, and authorizations of the Federal Communications Commission in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television markets made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations. . . .")

- If any dispute is triggered by a change in markets that results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request. The market modification request and the carriage complaint will then be addressed simultaneously. All broadcast signal carriage issues, such as channel positioning matters, would be addressed in the same proceeding.¹⁰² Pending complaints and petitions will be disposed of in a single proceeding whenever practicable.

37. We also find that where a broadcast station is dissatisfied with a final market modification decision issued by the Commission, and then successfully petitions Nielsen to change its market-of-origin in response to the Commission's adverse decision, the Commission's market modification decision remains controlling.

38. In Section 614(h) market modification cases, where issues are raised as to which market the cable communities are properly associated, the Commission will pay particular attention to the following considerations:

- Where persuasive evidence exists showing that two markets have been merged into a single market¹⁰³ because there was insufficient financial support from purchasers of the rating report available from the rating service to maintain separate markets, or for other reasons unrelated to market definitions relevant to the purposes of the Commission's broadcast signal carriage rules,¹⁰⁴ it will be presumed, in the absence of a demonstration to the contrary, that the previous demarcation points between the markets should be maintained. A failure of financial support for the ratings service shall not be regarded as indicative of a market change for purposes of the rules. Such evidence, as letters to the station from Nielsen explaining the change, would fulfill the burden of proof in this context.
- Where a county is shifted into a noncontiguous market (*e.g.*, a county in State A is considered part of a DMA in State B, which is not geographically contiguous with the county in State A), in considering whether that shift should be followed or revised through the Section 614(h) process, localism as reflected in over-the-air audience ratings, will be given particular attention. That is, because over-the-air audience data is a more accurate and reliable indication of local viewership, greater evidentiary weight will be

¹⁰²Under current Commission procedure, each must carry complaint, channel positioning complaint, or market modification request, is treated as a separate proceeding for public notice and disposition purposes. Nevertheless, we have made an effort to combine related proceedings whenever practicable.

¹⁰³In the transition from ADI to DMA market definitions, three markets will experience this type of merger: Hagerstown will merge into Washington, D.C., Sarasota will merge into Tampa-St. Petersburg-Sarasota, and Flagstaff will merge into Phoenix. See Appendix B.

¹⁰⁴The legislative history of Section 614 reminds us that Congress was particularly concerned about localism and ensuring that cable subscribers are able to receive local news, information and programming originating from nearby television stations. H.R. Rep. No. 628, 102d Cong., 2d Sess. at 64, 97. To this end, the Act provides that cable systems' mandatory carriage requirements for commercial television stations apply to those stations that are "local" with respect to the cable system. See 47 U.S.C. § 534(a) and (h). These are purposes and reasons to which market definitions should be relevant.

given to over-the-air audience data than to cable audience data. Careful attention will be given to unique market situations, like those in the Rocky Mountain area, where counties are sometimes hundreds of miles away from the core of the market. In considering a requested market modification, the Commission will closely examine whether the challenged market redesignation resulted from audience change due to cable carriage of the signals in question as opposed to resulting from changes in the local market.

- Where Nielsen's market redesignation is the result of potentially transitory programming popularity shifts on particular stations rather than from significant changes in the facilities or locations of such stations, the Commission may, upon request, resurrect the former market structure. Thus, for example, if a county were shifted to market A because the stations in that market garnered a 52% share of the audience and deleted from market B because its stations garnered only a 48% share, the Commission would consider leaving the market unchanged because stability is in the public interest and the underlying structure of the market has not been significantly altered to warrant the difficulties associated with the change.
- We will also consider factors such as changes in the time zone from the old market to the new market, as well as significant disruptions to subscribers. Evidence of significant disruptions to subscribers could include extensive changes in channel line-ups and subscriber objections to the change.
- Where a cable operator or broadcaster seeks to remain associated with a smaller market rather than be shifted to a larger market, the Commission will give weight to this consideration in a market modification proceeding. Supporting the smaller market is consistent with the Section 614(h) policy of paying "particular attention to the value of localism." In general, small cable system and small broadcast station concerns will be given careful attention. In this regard, the Commission will review whether such a change supports the policy of localism. In this situation, we will also take into consideration broadcasters' costs to deliver signals to cable system headends in the market and the costs to cable systems to receive local market stations.
- Separate from the specifics of the market modification process, the four statutory criteria, and other evidence considered in that process, the Commission will consider whether extreme hardship is imposed on small cable systems or small broadcast stations, often those unaffiliated with the top networks, by the DMA conversion process. Such hardship would include disproportionate expense to the system and programming disruption to subscribers that is exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations and channel position conflicts between old and new stations. We believe this hardship scheme will address the concerns raised by small cable operators in their comments, and are more closely aligned with the Act's localism tenets than the small operators' opt out and reimbursement proposals discussed above.

B. Effect on Previously Decided Market Modifications

39. We noted concern about the effect of changing to a DMA market definition on previous Section 614(h) decisions and petitions pending before the Commission.¹⁰⁵ Specifically, we requested commenting parties to address the consequences of a shift in definitions on the more particularized market boundary redefinition process contained in Section 614(h), the decisions that have been made under that section, and the proceedings under it that would result from shifting market definitions.¹⁰⁶

40. NAB contends that the Commission should continue to recognize all past and future 614(h) determinations prior to the conversion to DMAs, unless they are superseded by the results of a subsequent 614(h) proceeding.¹⁰⁷ Post urges the Commission not to alter prior market modification decisions made pursuant to Section 614(h).¹⁰⁸ The market modification process, it states, is not dependent on the methodology used to make market determinations in general. Therefore, the transition to Nielsen's DMAs is of no consequence, and prior decisions, as well as those made following the 1996 elections, should be left intact.¹⁰⁹

41. NCTA points out that current rules provide that where a market modification petition is pending, a cable operator cannot delete a commercial television station from carriage.¹¹⁰ NCTA contends that the Commission should not transform this provision into the equivalent of grandfathered carriage rights for stations that previously were deemed to be in an ADI, but which are not in the DMA.¹¹¹

42. We conclude that market modification requests filed prior to the effective date of the change from ADI to DMA, including petitions, petitions for reconsideration, and applications for review, will be processed under Arbitron's ADI market definitions. We do not believe that the petitions for reconsideration and applications for review currently pending will be affected by the conversion to DMAs because, in most of these cases, the market assignment will not change. In cases in which the conversion to DMAs will have a direct consequence, we will take the future DMA assignment into account, as we have done since the *First Order* was released. We will also leave intact final market modification cases that have not been appealed and/or cases that have been subject to final Commission review so as to avoid disturbing settled expectations.

43. In addition, we agree with NCTA's argument that where the Commission has previously decided to delete a community from a station's ADI market, that deletion will remain in effect after the

¹⁰⁵11 FCC Rcd at 6225.

¹⁰⁶NAB Comments at 2-3.

¹⁰⁷NAB Comments at 2-3.

¹⁰⁸Post Comments at 8-9.

¹⁰⁹*Id.*

¹¹⁰*See* 47 C.F.R. §75.56(c).

¹¹¹NCTA Comments at 3-4.

conversion to DMAs. We also recognize NCTA's concern that stations should not be able to assert carriage rights in its former market while a market modification deletion request is pending. Generally, a cable operator may not delete a commercial television station from carriage during the pendency of a market modification proceeding.¹¹² However, if conversion to DMAs moves a station out of the ADI that is the subject of a pending deletion request, the deletion request is effectively moot, and the cable operator may drop the station. We believe that few, if any, pending proceedings will fall within this factual pattern. Nevertheless, we agree with NCTA that, as we stated earlier, the Act and our rules cannot be read to allow a television station to claim carriage rights in more than one DMA, barring a modification by the Commission.

C. Improvements in the Ad Hoc Market Modification Process

1. Standardized Evidence Approach

44. We also sought comment on what changes in the modification process may be warranted given that administrative resources available to process Section 614(h) requests are limited and the Act established a 120-day time period for action on these petitions.¹¹³ We stated that new techniques may be needed to increase the efficiency of the decision making process.¹¹⁴ Under the existing process, a party is free to make its case using whatever evidence it deems appropriate.¹¹⁵ One suggested means of expediting the modification process was to establish more focused and standardized evidentiary specifications.¹¹⁶ Therefore, we proposed to establish specific evidentiary requirements in order to support market modification petitions under Section 614(h) of the Act.¹¹⁷ We requested comment on the following specific information submission requirements and sought alternatives that would assist the Commission in its review of individual requests. In particular, we proposed that each filing include exhibits showing:

- A map detailing the relevant community locations and geographic features, disclosing station transmitter sites, cable system headend locations, terrain features that would affect station reception, and transportation and other local factors influencing the shape of the economic market involved. Relevant mileage would be clearly disclosed;
- Historical cable carriage, illustrated by the submission of documents, such as rate cards, listing the cable system's channel line-ups for a period of several years.

¹¹²47 C.F.R. §76.59(c). The term "pending" in the market modification context means any proceeding awaiting action by either the Bureau or the Commission. A case is not considered pending for Section 614(h) purposes if it is before a court. See *Dynamic Cable et. al*, 12 FCC Rcd 9952 (1997).

¹¹³11 FCC Rcd at 6225.

¹¹⁴*Id.*

¹¹⁵*Id.*

¹¹⁶*Id.*

¹¹⁷*Id.* at 6255-26.

- Coverage provided by the stations, including maps of the areas in question with the universe of involved broadcast station contours and cable system franchise areas clearly delineated with the same level of specificity as the maps filed with the Commission for broadcast licensing proceedings;
- Information regarding coverage of news or other programming of interest to the community as demonstrated by program logs or other descriptions of local program offerings, such as detailed listings of the programming provided in a typical week that address issues of importance in the community in question and not the market in general;
- Other information that demonstrates a nexus between the station and the cable community, including data on transportation, shopping, and labor patterns;
- Published audience data for the relevant stations showing their average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households over a period of several years.¹¹⁸

45. NAB opposes a requirement that Section 614(h) petitions include exhibits showing all the factors listed, contending that this type of showing could unnecessarily impose extraordinary costs and burdens on petitioners, even in situations where the market modification is unopposed.¹¹⁹ Without identifying any specific changes that might improve the process, NAB indicates that it favors any procedural modifications designed to simplify and expedite the market modification process, so long as due process is preserved.¹²⁰

46. Paxson argues that the Commission's proposed "evidentiary requirements" places too much emphasis on distance, geography and Grade B coverage, and that by placing substantial reliance on historical carriage and audience data, the Commission's proposal would discriminate against small specialty stations.¹²¹ WEYS Television Corp. ("WEYS") contends that restricting evidentiary submissions under Section 614(h) is contrary to the intent of Congress, which elected to set out a series of non-exclusive factors to be taken into account in modification proceedings.¹²² WEYS argues that the Commission should not adopt a rule which could prevent participants from submitting relevant evidence. To the contrary, WEYS contends that parties in market modification proceedings should be free to present all evidence relevant to their position.¹²³

¹¹⁸*Id.* at 6226.

¹¹⁹NAB Comments at 4.

¹²⁰*Id.* at 5.

¹²¹Paxson Comments at 20-21.

¹²²WEYS Comments at 1.

¹²³*Id.* at 2.

47. ALTV believes that the Commission's proposal to standardize the Section 614(h) process is premature, as well as burdensome, in that the requirement to have stations or cable systems submit a "laundry list" of exhibits is inefficient, and would serve to discourage the filing of Section 614(h) request.¹²⁴ Furthermore, ALTV contends that such an approach may conflict with the statute,¹²⁵ which specifies a more limited range of evidentiary showings as justification for a market modification.¹²⁶ Lastly, ALTV contends that parties seeking modification have a body of case law which provides insight into the types of evidence the Commission has found persuasive.¹²⁷

48. Post, on the other hand, believes that the Commission's proposed additional criteria would expedite the market modification process.¹²⁸ It states that Congress, in promulgating the original criteria, did not intend to limit the factors to be given consideration, it is permissible for the Commission to consider these additional factors.¹²⁹ More importantly, Post asserts, the addition of the proposed factors will give parties notice of what the Commission considers to be important in making market modification determinations.¹³⁰ According to Post, parties should know in advance to collect such information, thereby facilitating the process.¹³¹

49. We will adopt the standardized evidence approach with regard to market modification petitions and amend the rules accordingly.¹³² Petitions that do not provide the evidence required by the rule will be dismissed without prejudice.¹³³ This option has distinct advantages. First, it promotes administrative efficiency. Commission staff would no longer have to spend time tracking down the appropriate maps, ratings data, and carriage records that are missing from the record.¹³⁴ Nor would Commission staff need to contact the relevant party to request the information that should have been included in the filing in the first place. With the relevant evidence available, the resources needed to process modification requests would be reduced. It now takes almost the entire 120-day statutory period to research, draft, adopt, and release a market modification decision. The interests of both broadcasters and cable operators will be advanced by a standardized evidentiary approach that will facilitate the

¹²⁴ALTV Comments at 5.

¹²⁵*Id.*

¹²⁶47 U.S.C. § 614(h)(1)(C)(ii).

¹²⁷ALTV Comments at 5-6.

¹²⁸Post Comments at 10.

¹²⁹*Id.*

¹³⁰*Id.* at 11.

¹³¹*Id.*

¹³²See Section 76.59(b), as amended, in Appendix C.

¹³³See Section 76.59(c), as amended, in Appendix C.

¹³⁴Even if a petition for market modification is unopposed, Commission staff must have this information to determine if the requested modification satisfies the statutory criteria.

decision-making process. By adopting the standardized evidence option, we may be able to bring greater uniformity and certainty to the process and avoid unnecessary reconsideration petitions and appeals, which will enable us to redirect administrative resources that would have been devoted to those proceedings.

50. In addition to the evidence delineated above, we encourage petitioners to provide a more specific technical coverage showing, through the submission of service coverage prediction maps that take terrain into account, particularly maps using the Longley-Rice prediction methodology.¹³⁵ In situations involving mountainous terrain or other unusual geographical feature, the Commission will consider Longley-Rice propagation studies in determining whether or not a television station actually provides local service to a community under factor two of the market modification test. We will view such studies as probative evidence in our analysis and a proper tool to augment Grade B contour showings. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. Since both the Commission and the broadcasting industry have relied upon the Longley-Rice model in determining the digital television Table of Allocations, these studies will become increasingly useful in defining market areas for digital television stations as they come on the air.¹³⁶

51. We do not find merit in the argument that the standardized evidence option would pose an unreasonable financial burden on petitioners. We believe that the requested evidence should be obtainable without unreasonable difficulty and is in any case the kind of information that should be reviewed in determining whether a filing is appropriate. Most of the requested information has been included by more careful petitioners in the past without complaint about costs or administrative difficulties.¹³⁷ Our decision here simply standardizes the type of evidence we find relevant in processing market modification petitions.

52. ALTV contends that the standardized evidence approach conflicts with the Act because Section 614(h) specifies a limited range of evidence needed to support a market modification petition. We disagree. The language of Section 614(h) provides that in considering market modification requests, "the Commission shall afford particular attention to the value of localism by taking into account *such factors as . . .*" (emphasis added), indicating that the factors are non-exclusive.¹³⁸ Likewise, the legislative

¹³⁵"Longley-Rice Methodology for Evaluating TV Coverage and Interference," OET Bulletin 69, Federal Communications Commission (July 2, 1997) <<http://www.fcc.gov/oet/info/documents/bulletins/#69>>. We note that the Cable Services Bureau has considered Longley-Rice studies in past market modification decisions. See, e.g., *Paxson Atlanta License, Inc.*, 1998 WL 684978 (Cab. Serv. Bur. 1998); *Paxson Communications Corp.*, 13 FCC Rcd 17869 (Cab. Serv. Bur. 1998); and *Channel 39 Inc.*, 13 FCC Rcd 3108 (Cab. Serv. Bur. 1998). The Longley-Rice model has also been used digital television broadcasting allotment purposes.

¹³⁶ Longley-Rice is the Commission's designated methodology for determining where service is provided by a DTV station. See 47 C.F.R. § 73.622(e).

¹³⁷If a requested item is in the exclusive control of the opposing party, and the opposing party refuses to provide the information, we will take into consideration which party is responsible for the absence of the requested information.

¹³⁸47 U.S.C. § 614(h)(1)(C)(ii).

history accompanying Section 614(h) indicates that the four factors are non-exclusive,¹³⁹ and we have interpreted this language to mean that the parties may submit any additional evidence they believe is appropriate.¹⁴⁰ The approach we adopt today adds substance to this directive by clearly indicating what kind of evidence is necessary for a modification petition to be deemed complete. Parties may continue to submit whatever additional evidence they deem appropriate and relevant.¹⁴¹

2. Prima Facie Evidence Approach

53. The second proposal proffered by the Commission to increase the efficiency of the decision making process was to alter to some extent the burden of producing the relevant evidence.¹⁴² Thus, for example, Section 614(h) establishes four statutory factors to govern the *ad hoc* market change process, including historical carriage, local service, service from other station, and audience viewing patterns.¹⁴³ These factors are intended to provide evidence as to a particular station's market area, but they are not the only factors considered.¹⁴⁴ These factors must be considered in conjunction with other relevant information to develop a result that is designed to "better effectuate the purposes" of the must-carry requirements.¹⁴⁵ The *Notice* sought comment on whether the process could be expedited by permitting the party seeking the modification to establish a *prima facie* case based on historical carriage, technical signal coverage of the area in question, and off-air viewing.¹⁴⁶ Such factors track the statutory provision and are relatively free from factual dispute. The presentation of such a *prima facie* case could then trigger an obligation on the part of any objecting entity to complete the factual record by presenting conflicting evidence as to the actual scope of the economic market involved.¹⁴⁷ This could include, for example, programming information and other evidence as to the local advertising market involved. Dividing the obligations in this fashion, the *Notice* suggested, would force the party with the best access to relevant information to disclose that information at the earliest possible point in the process.¹⁴⁸

¹³⁹See H.R. Rep. No. 628, 102d Cong., 2d Sess. at 97.

¹⁴⁰See, e.g., *Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12267-68 (1997).

¹⁴¹For example, parties may continue to submit evidence relevant to small specialty stations that compensates for lack of historical carriage and audience data.

¹⁴²11 FCC Rcd at 6220-27.

¹⁴³*Id.* at 6227.

¹⁴⁴*Id.*

¹⁴⁵*Id.*

¹⁴⁶*Id.*

¹⁴⁷*Id.*

¹⁴⁸*Id.* at 6227.

54. Post states that the Commission's proposal to establish a *prima facie* standard will add nothing to the market modification process.¹⁴⁹ The party seeking modification may not always have the necessary information readily available.¹⁵⁰ Further, the use of the *prima facie* standard undermines the purpose of the market modification process--to refine the television market because the original market determination does not reflect the station's true market.¹⁵¹ Post believes that unique circumstances are what prompt a party to seek a market modification, and in establishing the market modification process, Congress did not intend that a rigid formulaic method be used.¹⁵²

55. NAB comments that it is unclear how the *prima facie* approach materially differs from current practice, but expresses general support for any procedural changes that simplify and expedite the process, provided due process is preserved.¹⁵³

56. Paxson suggest that the market modification procedures should be amended to provide carriage of stations that commit to providing more locally produced public interest programming.¹⁵⁴ Paxson states that to comply with Congressional intent and minimize the administrative workload associated with the market modification process, the Commission should revise the procedures used to process requests to delete communities by adopting the following analysis: (1) the Commission should first determine if the station is in the same DMA as the cable system; (2) if so, has the cable system seeking relief devoted one-third of its usable activated channels for the carriage of local commercial television stations; (3) if not, the Commission should deny the cable operator's request based on the "value of localism;" and (4) if the operator has devoted one-third of its channels to local stations, the Commission should determine whether modification of the stations's market would further the "value of localism".¹⁵⁵ Paxson submits that this four-step approach is the most effective mechanism for improving the Commission's market modification process.

57. WRNN-TV Associates Limited Partnership ("WRNN"), like Paxson, contends that public interest programming receive special preference in the Commission's market modification analysis.¹⁵⁶ This consideration is necessary to promote localism and provide incentives to air community-based programming.¹⁵⁷

¹⁴⁹Post Comments at 11.

¹⁵⁰*Id.* at 12.

¹⁵¹*Id.*

¹⁵²*Id.*

¹⁵³NAB Comments at 5.

¹⁵⁴*Id.* at 29.

¹⁵⁵*Id.* at 19.

¹⁵⁶WRNN-TV Comments at 10.

¹⁵⁷*Id.* at 11.

58. We find that the *prima facie* option is not the proper approach because it seems likely to create another area for procedural disputes. In contrast to the standardized evidence approach, which provides a framework that should expedite review, we are concerned that the *prima facie* approach, while possibly streamlining the process, would sacrifice the flexibility to consider all useful evidence. We also reject the market deletion plan proposed by Paxson. Under this approach, the Commission need only find that the cable system and the broadcaster share a DMA, and the cable system still has capacity for the carriage of local signals, in order to dismiss a market deletion petition. We believe this plan is contrary to the plain meaning of the Act because it ignores the four statutory factors that we must take into account when reviewing market deletion requests.¹⁵⁸

59. With regard to WRNN-TV and Paxson's request that programming should be given more weight in the modification analysis, we believe that it is inappropriate to state that one factor is universally more important than any other, as each is valuable in assessing whether a particular community should be included or excluded from a station's local market, and the relative importance of particular factors will vary depending on the circumstances in a given case. Programming is considered in the context of Section 614(h) proceedings only insofar as it serves to demonstrate the scope a station's existing market and service area, not as a *quid pro quo* that guarantees carriage or an obligation that must be met to obtain carriage.¹⁵⁹ However, we do find that such information is particularly useful in determining if the television station provides specific service to the community subject to modification. As such, we will include programming of local interest in the analysis along with mileage, Grade B contour coverage, and physical geography, when reviewing the local service element of the market modification test.

3. General Approach to Modifying Markets

60. In its comments on the *Further Notice*, Paxson criticizes the approach the Commission has taken in some market modification decisions. Although these comments are not confined to the issues raised in the *Further Notice*, they are relevant to the general topic of market modifications, and we will address them here. Paxson contends that the analytical weight the Commission places on mileage and technical coverage is inconsistent with Congressional intent and would have the effect of codifying the existing policy that "improperly" places a dispositive reliance on Grade B contours and distance in making market modification decisions.¹⁶⁰ WRNN-TV agrees. It states that Congress never intended the Commission to rely on Grade B coverage to determine carriage rights.¹⁶¹ The Commission's emphasis on Grade B coverage, Paxson contends, has undermined the policies supporting must carry, such as content diversity and promotion of multiple sources of information.¹⁶²

61. In reply, NCTA argues that the Commission should retain the approach it has taken in the current ADI context when determining whether a station must be carried in the DMA context, i.e., where

¹⁵⁸47 U.S.C. § 614(h)(1)(C)(ii).

¹⁵⁹See *Market Modifications and the New York Area of Dominant Influence*, 12 FCC Rcd 12262, 12270 (1997).

¹⁶⁰Paxson Comments at 20-21.

¹⁶¹WRNN-TV Comments at 9.

¹⁶²*Id.*

a station within an ADI fails to provide local service to the community, it has been deemed not be a must carry station.¹⁶³

62. We continue to believe that our interpretation of Section 614(h), and the evidence we have used to analyze local service and adjust markets is reasonable and consistent with the language of the Act and statutory intent. We note that the arguments Paxson and WRNN raise were addressed at length in the *New York ADI Appeals Memorandum Opinion and Order*, ("New York ADI Order")¹⁶⁴ which disposed of numerous separate must carry/market modification appeals involving seven New York ADI cable operators¹⁶⁵ and five television stations.¹⁶⁶ The Commission's decision, subsequently affirmed by the United States Court of Appeals for the Second Circuit,¹⁶⁷ generally affirmed a staff decision to retain certain communities, and to delete other communities, from each of the stations' markets based on the four statutory factors, with particular attention paid to the local service factor as measured by Grade B contours and geographic distance, as well as other considerations.¹⁶⁸ The Court's opinion fully endorsed the Commission's approach to market modifications and agreed that our careful balancing of the enumerated statutory factors, and other important considerations, are entirely consistent with the language and intent of the Act.

4. Maintaining the Channel Line-up Status Quo

63. Time Warner Cable complains that the statutory policy of maintaining the "status quo" during the pendency of a market modification proceeding, without a parallel provision relating to channel additions, unfairly benefits broadcasters to the detriment of cable operators.¹⁶⁹ For instance, Time Warner argues that the Commission would likely not object to a stay of a Cable Services Bureau order deleting a station from a community while that order was being appealed to a court.¹⁷⁰ In contrast, the Commission would likely refuse to temporarily stay the effect of a Bureau order denying a cable operator market

¹⁶³NCTA Reply Comments at 5.

¹⁶⁴See 12 FCC Rcd 12262 (1997).

¹⁶⁵The operators include Time Warner; (2) Cablevision Systems Corp.; (3) Adelphia; (4) Comcast; (5) Service Electric; (6) TKR; and (7) MediaOne.

¹⁶⁶These stations are: (1) WMBC-TV (Newton, N.J.), (2) WLNY (Riverhead, N.Y.), (3) WTBV (Poughkeepsie, N.Y.), (4) WRNN-TV (Kingston, N.Y.), and (5) WHAI-TV (Bridgeport, CT).

¹⁶⁷See *WLNY v. FCC*, 163 F.3d 187 (2d Cir. 1998).

¹⁶⁸The Commission reversed the Cable Service's Bureau market modification decisions in limited circumstances giving back must-carry rights to stations WMBC-TV and WHAI-TV in certain communities.

¹⁶⁹Time Warner Comments at 3.

¹⁷⁰*Id.* at 2 (citing the Response of the Federal Communications Commission to Emergency Petition for a Writ of Mandamus, filed September 25, 1996, *WEYS Television Corp.* (D.C. Cir. No. 96-1351). In this instance, the Commission made no objection to the stay motion.

modification request and would require the operator to add a station that was not previously carried.¹⁷¹ Time Warner asks that the Commission treat television stations and cable operators the same when a Bureau market modification petition is pending appeal.

64. In answer to this particular argument, we note that Section 614(h) prohibits cable operators from deleting from carriage commercial broadcast stations during the pendency of a market modification request but does not address maintaining the status quo with respect to additions.¹⁷² Given the absence of a parallel statutory directive with respect to channel additions, we see no reason to depart from the general presumption that a decision is valid and binding until it is stayed or overruled. To the extent the process aids broadcast stations in both retaining and obtaining cable carriage rights, that appears to be the result intended by the statutory framework adopted.

V. ADMINISTRATIVE MATTERS

A. Market Entry Analysis

65. Section 257 of the Act requires the Commission to complete a proceeding to identify and eliminate market entry barriers for entrepreneurs and other small businesses in the telecommunications industry.¹⁷³ The Commission is directed to promote, *inter alia*, a diversity of media voices and vigorous economic competition.¹⁷⁴ We believe that this *Order* is consistent with the objectives of Section 257 in that it promotes a smooth transition to DMAs for both cable operators and broadcasters.

B. Final Regulatory Flexibility Act Analysis

66. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Order and Further Notice of Proposed Rulemaking* in CS Docket No. 95-178, 11 FCC Rcd 6201 (1996). The Commission sought written public comments on the proposals in the *Further Notice* including comments on the IRFA. The FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847.¹⁷⁵

¹⁷¹*Id.* at 3 citing *Cablevision Systems Corporation; Time Warner New York City Cable Group: Petitions for Stay Pending Reconsideration*, DA 96-1231, 1996 WL 434705 (Cab. Serv. Bur. 1996). While Time Warner asked for a stay of the Bureau's decision vis-a-vis WMBC-TV, Cablevision had asked for a stay of a Bureau decision which required it to carry station WRNN and WTBY on five of its New York ADI cable systems. In this decision, the Bureau denied the stay requests.

¹⁷²47 U.S.C. § 534(h)(1)(C)(iii) ("A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant [to the market modification process].")

¹⁷³Communications Act § 257(a), 47 U.S.C. § 257(a).

¹⁷⁴Communications Act § 257(b), 47 U.S.C. § 257(b).

¹⁷⁵Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), codified at 5 U.S.C. § 610 *et seq.* (1996).

67. *Need and Purpose of this Action:* This action is necessary because the procedure for determining local television markets for signal carriage purposes relies on a market list no longer published by the Arbitron Ratings Company. Moreover, action is required to mitigate disruptions in cable channel line-ups that will be caused by the shift to a new television market paradigm.

68. *Summary of Issues Raised by the Public in Response to the Initial Regulatory Flexibility Analysis:* SCBA filed comments in response to the Initial Regulatory Flexibility Analysis. SCBA states that the Commission's objective of a smooth transition from a market definition based on ADIs to one based on DMAs can be accomplished with respect to small cable systems by creating special transition rules. SCBA has submitted small cable transition rules that allegedly will help minimize regulatory burdens on small cable systems. SCBA first proposes rules that allow qualified small cable systems to opt out of the change in market definitions for the 1999 election.¹⁷⁶ According to SCBA, this will allow certain small cable systems an additional three years to prepare for the impact of market redefinition. In the alternative, SCBA suggests transition rules, detailed in paragraphs 29-30, above, that will protect existing programming and shift certain costs associated with market redefinition to the broadcasters that benefit from those costs.¹⁷⁷ These comments are addressed in the Order and below.

69. *Description and Estimate of the Number of Small Entities Impacted.* The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction," and the same meaning as the term "small business concern" under Section 3 of the Small Business Act.¹⁷⁸ A small concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁷⁹

70. *Cable Operators.* The Communications Act at 47 U.S.C. § 543 (m) (2) defines a small cable operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. We have found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.¹⁸⁰ Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.¹⁸¹ Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the

¹⁷⁶SCBA IRFA Comments at 2.

¹⁷⁷*Id.*

¹⁷⁸RFA, 5 U.S.C. § 601(3) (1980).

¹⁷⁹Small Business Act, 15 U.S.C. § 632 (1996).

¹⁸⁰47 C.F.R. § 76.1403(b).

¹⁸¹Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

Communications Act. We are likewise unable to estimate the number of these small cable operators that serve 50,000 or fewer subscribers in a franchise area. We can, however, assume that the number of cable operators serving 617,000 subscribers or less that 1) are not affiliated with entities whose gross annual revenues exceed \$250,000,000 or 2) serve 50,000 or fewer subscribers in a franchise area, is less than 1450.

71. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than \$11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than \$11 million in revenue that were in operation for at least one year at the end of 1992.¹⁸²

72. *Open Video System ("OVS")*: To date the Commission has certified 23 OVS systems, at least two of which are known to be currently providing service. Little financial information is available for entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenue, we conclude that at least some of the OVS operators qualify as small entities.

73. *Television Stations*. The proposed rules and policies will apply to television broadcasting licensees, and potential licensees of television service. The Small Business Administration defines a television broadcasting station that has no more than \$10.5 million in annual receipts as a small business.¹⁸³ Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.¹⁸⁴ Included in this industry are commercial, religious, educational, and other television stations.¹⁸⁵ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.¹⁸⁶ Separate establishments primarily engaged in producing taped television program materials

¹⁸²1992 Census, *supra*, at Firm Size 1-123.

¹⁸³13 C.F.R. §121.201, Standard Industrial Code (SIC) 4833 (1996).

¹⁸⁴Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

¹⁸⁵*Id.* See also OMB SIC Manual at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

¹⁸⁶Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 CENSUS OF TRANSPORTATION, COMMUNICATIONS AND UTILITIES, ESTABLISHMENT AND FIRM SIZE, Series UC92-S-1, Appendix A-9 (1995).

are classified under another SIC number.¹⁸⁷ There are approximately 1,589 operating full power television broadcasting stations in the nation as of April 30, 1999.¹⁸⁸ Approximately 1,200 of those stations are considered small businesses.¹⁸⁹

74. In addition to owners of operating television stations, any entity who seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

75. *Reporting, Recordkeeping and Other Compliance Requirements.* The rules adopted in this *Order* will affect broadcast stations, cable operators, and OVS system operators, including those that are small entities. The rules adopted in this *Order* require broadcasters, cable operators, and OVS operators to provide specific forms of evidence to support market modification petitions. We do not believe that the rules adopted here today will require any specialized skills beyond those already used by broadcasters and cable operators.

76. *Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Rejected.* While declining to adopt SCBA's proposals, stated above, the Commission has implemented a procedural mechanism allowing small cable systems to file hardship petitions, if certain conditions are met. Specifically, the Commission will consider, in a case-by-case adjudicatory proceeding, whether extreme hardship would be imposed on small cable systems by requiring a transition to a new DMA market. Such hardship would include disproportionate expense to the system and programming disruption to subscribers exacerbated by the small size of the system. Evidence of such hardship would include reliable cost estimates for carrying the new stations; channel position conflicts between old and new stations; or an extensive change in channel line-ups. This mechanism should allay the concerns proffered by small cable operators.

77. *Report to Congress.* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this *Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

C. Final Paperwork Reduction Act of 1995 Analysis

78. The requirements adopted in this *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and would impose modified information collection requirements on the public. The Commission has requested Office of Management and Budget ("OMB")

¹⁸⁷*Id.* SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

¹⁸⁸See *Broadcast Station Totals As Of April 30, 1999*, FCC News Release, May 11, 1999.

¹⁸⁹We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1998 total of 1569 TV stations to arrive at 1,200 stations categorized as small businesses.

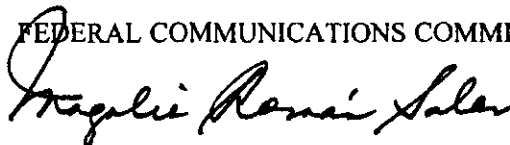
approval of the information collection requirements contained in this *Report and Order* under the emergency processing provisions of the 1995 Act.¹⁹⁰

D. Ordering Clauses

79. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 4(i), 4(j), 614 and 653 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 534 and 573, and Section 301 of the Telecommunications Act of 1996, Pub. L. No. 104-104 (1996), part 76 IS AMENDED as set forth in Appendix C, effective 30 days after publication in the Federal Register.

80. **IT IS FURTHER ORDERED** that the commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Final Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et. seq.* (1981).

FEDERAL COMMUNICATIONS COMMISSION



Magalie R. Salas
Secretary

¹⁹⁰See 5 C.F.R. § 1320.13.

APPENDIX A**LIST OF COMMENTERS RESPONDING TO THE FURTHER NOTICE****Comments**

National Association of Broadcasters
National Cable Television Association
Paxson Communications Corporation
Post Company
Small Cable Business Association
Southern Broadcast Corporation of Sarasota
Time Warner Cable
WEYS Television Corp.
WRNN-TV Associates Limited Partnership

Reply Comments

Association of Local Television Stations, Inc.
National Association of Broadcasting
National Cable Television Association
Paxson Communications Corporation
Post Company
Small Cable Business Association
United Communications Corporation
WRNN-TV Associates Limited Partnership

PETITIONS FOR RECONSIDERATION AND OPPOSITIONS THERETO

Blackstar of Ann Arbor, Inc.
Costa de Oro Television, Inc.
National Cable Television Association (opposition filed)

APPENDIX B

**1991-1992 ADIs v. 1997-1998 DMAs:
Differences in the Television Markets**

The following list illustrates County changes found between the 1991-1992 ADI and 1997-1998 DMA television market structures, as well as other differences relevant for broadcast signal carriage purposes. 135 counties are affected by the switch. Nine out of the top ten markets and twenty out of the top thirty 1997-1998 DMA markets exhibit some variance from the 1991-1992 ADI scheme. A total of 133 markets, out of a possible 211, show a variance between ADIs and DMAs. A “-” sign indicates that a county that was in an ADI is not in a DMA. A “+” sign indicates that a county that was not in an ADI is now in a DMA. The enumerated DMAs are ranked according to size.

1. New York -- Pike County (-).
2. Los Angeles -- Ventura County is not divided into western and eastern parts by Nielsen as it was by Arbitron. San Bernadino County is not divided into northern and southern parts as it was by Arbitron. KSTV-TV is assigned to the Los Angeles DMA whereas under Arbitron , it was assigned to the Santa Barbara-Santa Maria-San Luis Obispo ADI.
3. Chicago -- Iroquois County (+).
4. Philadelphia -- No change.
5. San Francisco-Oakland-San Jose -- Santa Clara County and Contra Costa County are not demarcated by Nielsen as they were by Arbitron.
6. Boston -- Sullivan County (-).
7. Washington, D.C. -- Hagerstown, an ADI separate from Washington, DC under Arbitron, is part of the Washington, D.C., DMA. Thus Washington County is now in the Washington, D.C. DMA. Hardy County (+), Page County (+).
8. Dallas-Ft. Worth -- Grayson County (-).
9. Detroit -- Sanilac County (+). WBSX-TV assigned to the Detroit DMA.
10. Atlanta -- Cleburne County (+), Cherokee County (-).
11. Houston -- No change.
12. Seattle-Tacoma -- Douglas County (-), Kittitas County W. (-).
13. Cleveland -- No change.
14. Minneapolis-St. Paul -- Washburn county (+), Brown County (-), Watowan County (-), Martin County (-).
15. Tampa-St. Petersburg-Sarasota -- Sarasota, an ADI separate from Tampa under Arbitron, is part of the Tampa DMA. Thus, Sarasota County is in the Tampa DMA. Desoto County (-).
16. Miami-Ft. Lauderdale -- No change.
17. Phoenix -- Flagstaff, an ADI separate from Phoenix under Arbitron, is part of the Phoenix DMA. Thus, Coconino County is in the Phoenix DMA. More Apache County S. Communities appear to be in the Phoenix DMA.
18. Denver -- Teller County (-), Goshen County (-), Niobrara (-). The following counties, which were not part of the Denver ADI, are in the Denver DMA: Alamosa, Box Butte, Delta, Eureka, Hooker, Keith, Lincoln, Ouray, Prowers, Rio Grande, Saguache, and San Miguel.
19. Pittsburgh -- No change.
20. Sacramento-Stockton-Modesto -- Parts of Placer County appear to be in the Sacramento DMA.
21. St. Louis -- Jefferson County (-), Montgomery County (-).
22. Orlando-Daytona Beach Melbourne -- No change.

23. Baltimore -- No change.
24. Portland, Oregon -- No change.
25. Indianapolis -- Lawrence County (+), Jennings County (+), Fayette County (+).
26. San Diego -- No change.
27. Hartford-New Haven -- No change.
28. Charlotte -- Ashe County (+), Avery County (+).
29. Raleigh-Durham -- Northampton County (+), Scotland (-).
30. Cincinnati -- Fayette County (-).
31. Kansas City -- Harrison (+), Brown (-), Doniphan (-), Andrew (-), DeKalb (-), Gentry (+).
32. Milwaukee -- No change.
33. Nashville -- Moore (-), Barren (-), Clinton (-).
34. Columbus, OH -- No change.
35. Greenville-Spartanburg-Ashville-Anderson -- No change.
36. Salt Lake City -- Teton (+), Caribou (+), Washakie (-).
37. Grand Rapids-Kalamazoo-Battle Creek -- No change.
38. San Antonio -- No change.
39. Norfolk-Portsmouth-Newport News -- Northampton (-).
40. Buffalo -- No change.
41. New Orleans -- No change.
42. Memphis -- Union (-).
43. West Palm Beach-Ft. Pierce -- No change.
44. Oklahoma City -- No change.
45. Harrisburg-Lancaster-Lebanon-York -- Mifflin (+).
46. Greensboro-High Point-Winston Salem -- Grayson (+).
47. Wilkes Barre-Scranton -- Pike (+), Bradford (+).
48. Albuquerque-Santa Fe -- Luna (+), La Plata (+), Hudspeth (+), Rio Grande (-), Alamosa (-), Seguche (-), Roosevelt (-).
49. Providence-New Bedford -- No change.
50. Louisville -- Lawrence (-), Hart (-), Jennings (-).
51. Birmingham -- Cherokee (+), Cleburne (-), Pickens (+).
52. Albany-Schenectady-Troy -- No change.
53. Dayton -- No change.
54. Jacksonville-Brunswick -- Clinch (-), Brantley (-).
55. Fresno-Visalia -- No change.
56. Little Rock-Pine Bluff -- Jackson (+), Nevada (-).
57. Charleston-Huntington, WV -- Pleasants (-), Braxton (+), Morgan (-).
58. Tulsa -- No change.
59. Richmond-Petersburg -- Madison (-), Greene (-).
60. Austin -- No change.
61. Las Vegas -- Nye (+).
62. Mobile-Pensacola -- Greene (+).
63. Flint-Saginaw-Bay City -- Sanilac (-), Clare (-).
64. Knoxville -- Whitley (-), Knox (-).
65. Wichita-Hutchinson Plus -- Phillips (-), Morton (-), Beaver (-).
66. Toledo -- No change.
67. Lexington -- Morgan (+), Knott (+), Knox (+), Whitley (+).

68. Roanoke-Lynchburg -- Grayson (-), Bland (+).
69. Des Moines-Ames -- Kossuth (+), Wapello (-), Taylor (+), Adams (+).
70. Green Bay-Appleton -- Delta (-), Schoolcraft (-), Dickinson (-).
71. Honolulu -- No change.
72. Syracuse -- Schuyler (-).
73. Spokane -- Sanders (-), Douglas (+).
74. Omaha -- Adams (-), Taylor (-).
75. Rochester, NY -- No change.
76. Shreveport -- Nevada (+), Sabine (TX) (+), Upshur (-), Franklin (-).
77. Springfield, MO -- No change.
78. Tucson (Nogales) -- No change.
79. Paducah-Cape Girardeau-Mount Vernon -- Jefferson (+), Gallatin (-), Ripley (-).
80. Portland-Auburn -- Grafton (-).
81. Champaign-Springfield-Decatur -- Iroquois (-), Cumberland (+).
82. Huntsville-Decatur, Florence -- Jackson (+), Moore (+).
83. Ft. Myers-Naples -- De Soto (+).
84. Madison -- Grant (+), Juneau (+).
85. South Bend-Elkhart -- No change.
86. Chattanooga -- Jackson (-).
87. Cedar Rapids-Waterloo and Dubuque -- Crawford (+), Grant (-), Cedar (+).
88. Columbia, SC -- Saluda (-).
89. Davenport-Rock Island-Moline -- Stark (+), Cedar(-).
90. Jackson, MS -- Humphreys (+), Walthall (+).
91. Burlington-Plattsburgh -- Sullivan (+), Grafton (+).
92. Johnstown-Altoona -- Forest (+), Mifflin (-).
93. Tri-Cities, TN-VA -- Knott (-), Avery (-), Ashe (-) .
94. Colorado Springs-Pueblo -- Teller (+), Prowers (-), Lincoln (-).
95. Evansville -- Gallatin (+).
96. Waco-Temple-Bryan -- No change.
97. Youngstown -- No change.
98. Baton Rouge -- No change.
99. El Paso -- Luna (-), Hudspeth (-), Culberson (+).
100. Savannah -- Brantley (+), Treutlen(-).
101. Lincoln-Hastings-Kearney Plus -- Keya Paha (+), Boyd (+), Wheeler (+), Phillips (+).
102. Ft. Wayne -- No change.
103. Springfield-Holyoke -- No change.
104. Harlingen-Welasco-Brownsville-McAllen -- No change.
105. Lansing -- No change.
106. Greenville-New Bern-Washington -- No change.
107. Tyler-Longview (Lufkin-Nacogdoches) -- Franklin (+), Upshur (+).
108. Sioux Falls (Mitchell) -- Clay (+), Boyd (-), Keya Paha (-).
109. Augusta -- Saluda (+).
110. Peoria-Bloomington -- Stark (-).
111. Florence-Myrtle Beach -- Robeson (+), Scotland (+).
112. Tallahassee-Thomasville -- Lanier (+).
113. Fargo-Valley City -- No change.
114. Montgomery -- No change.

115. Santa Barbara-San Maria-Luis Obispo -- No change.
116. Ft. Smith-Fayetteville-Springfield-Rogers -- No change.
117. Charleston, SC -- No change.
118. Reno -- Nye (-), Eureka (-).
119. Traverse City-Cadillac -- Claire (+).
120. Eugene -- No change.
121. Monterey-Salinas -- No change.
122. Lafayette, LA -- Allen (+).
123. Macon -- Treutlen (+), Telfair (+), Macon (+).
124. Yakima-Pasco-Richland-Kennewich -- Kittitas W (+).
125. Boise -- No change.
126. Amarillo -- Morton (+), Beaver (+), Roosevelt (+).
127. Corpus Christi -- No change.
128. Columbus, GA -- Macon (-).
129. La Crosse-Eau Claire -- Clark (+), Juneau (-), Crawford (-).
130. Chico-Redding -- No change.
131. Bakersfield -- No change.
132. Monroe-El Dorado -- No change.
133. Columbus-Tupelo-West Point -- Union (+), Granada (-), Pickens (-).
134. Duluth-Superior -- Washburn (-).
135. Rockford -- No change.
136. Wausau-Rhineland -- Clark (-).
137. Beaumont-Port Arthur -- Sabine (TX) (-).
138. Wheeling-Steubenville -- Hancock (+).
139. Topeka -- Brown (+).
140. Terre Haute -- Cumberland (-).
141. Sioux City -- Clay (-), Wheeler (-).
142. Medford-Klamath Falls -- No Change.
143. Erie -- Forest (-).
144. Wichita Falls-Lawton -- Knox (-), King (+).
145. Columbia-Jefferson City -- Montgomery (+).
146. Joplin-Pittsburg -- No change.
147. Lubbock -- King (-), Gaines (+).
148. Albany, GA -- Telfair (-), Lanier (-), Clinch (+).
149. Bluefield-Beckley-Oak Hill -- Bland (-).
150. Odessa-Midland -- Culberson (-), Gains (-).
151. Minot-Bismarck-Dickinson -- Perkins (-), Dawson (-).
152. Wilmington -- Robeson (-).
153. Rochester-Mason City-Austin -- Kossuth (-).
154. Binghamton -- Bradford (-).
155. Bangor -- No change.
156. Anchorage -- No change.
157. Panama City -- Holmes (+).
158. Biloxi-Gulfport -- Green (-).
159. Palm Springs -- No change.
160. Abilene-Sweetwater -- Knox (+).
161. Quincy-Hannibal-Keokuk -- No change.

162. Sherman, TX-Ada, OK -- Grayson (+).
163. Salisbury -- No change.
164. Clarksburg-Weston -- Braxton (-).
165. Gainesville -- No change.
166. Hattiesburg-Laurel -- Walthall (-).
167. Billings -- Prairie (-).
168. Idaho Falls-Pocatello -- Cassie (-), Minidokan (-), Teton (-), Caribou (-).
169. Utica -- No change.
170. Elmira -- Schuyler (+).
171. Missoula -- Sanders (+), Granite (+).
172. Rapid City -- Box Butte (-), Niobrara (+), Perkins (+).
173. Dothan -- Holems (-).
174. Watertown -- No change.
175. Marquette -- Dickinson (+), Schoolcraft (+), Delta (+).
176. Yuma-El Centro -- No change.
177. Harrisonburg -- Hardy (-), Page (-).
178. Alexandria, LA -- No change.
179. Lake Charles -- Allen (-).
180. Greenwood-Greenville -- Humphreys (-), Grenada (+), Walthall (+).
181. Jonesboro -- Jackson (-), Ripley (+).
182. Bowling Green -- Hart (+), Barren (+), Clinton (+).
183. Meridian -- No change.
184. Great Falls -- No change.
185. Jackson, TN -- No change.
186. Parkersburg -- Pleasants (+).
187. Tuscaloosa -- No change.
188. Mankato -- Martin (+), Waton-Wan (+), Brown (+).
189. Eureka -- No change.
190. Twin Falls -- Cassia (+), Minidoka (+).
191. Grand Junction-Montrose -- Delta (-), Ouray (-), San Miguel (-), La Plata (-).
192. Butte-Bozeman, MT -- Granite (-).
193. St. Joseph -- Gentry (-), Harrison (-), Doniphan (+), DeKalb (+), Andrew (+).
194. Charlottesville -- Green (+), Madison (+).
195. Cheyenne-Scottsbluff-Sterling -- Goshen (+).
196. San Antonio -- No change.
197. Laredo -- No change.
198. Lafayette, IN -- No change.
199. Ottumwa-Kirksville -- Wapello (+).
200. Casper-Riverton -- Washakie (+).
201. Anniston -- No change.
202. Bend, OR -- No change.
203. Lima -- No change.
204. Zanesville -- No change.
205. Fairbanks -- No change.
206. Victoria -- No change.
207. Presque Isle -- No change.
208. Helena -- No change.

209. Alpena -- No change.

210. North Platte -- Hooker (-), Keith (-).

211. Glendive -- Dawson (+), Prairie (+) (new market--no ADI counterpart).

APPENDIX C

Rule Changes

Part 76 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

1. Section 76.55(e) is amended as follows (additions shown here in bold, deletions shown here in strikeout):

§ 76.55 Definitions applicable to the must-carry rules.

* * *

(e) Television market.

(1) Until January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Area of Dominant Influence (ADI) as determined by Arbitron and published in the Arbitron 1991- 1992 Television ADI Market Guide, as noted below, except that for areas outside the contiguous 48 states, the market of a station shall be defined using Nielsen's Designated Market Area (DMA), where applicable, as published in the Nielsen 1991-92 DMA Market and Demographic Rank Report, and that Puerto Rico, the U.S. Virgin Islands, and Guam will each be considered a single market.

(2) Effective January 1, 2000, a commercial broadcast television station's market, unless amended pursuant to § 76.59, shall be defined as its Designated Market Area (DMA) as determined by Nielsen Media Research and published in its *DMA Market and Demographic Rank Report* or any successor publication~~{, as noted below.}~~[.]

- (i) **For the 1999 election pursuant to §76.64(f), which becomes effective on January 1, 2000, DMA assignments specified in the 1997-98 *DMA Market and Demographic Rank Report*, available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used.**
- (ii) **The applicable DMA list for the 2002 election pursuant to §76.64(f) will be the DMA assignments specified in the 2000-2001 list, and so forth for each triennial election pursuant to §76.64(f).**

~~(4)~~ (3) In addition, the county in which a station's community of license is located will be considered within its market.

~~(3)~~ (4) A cable system's television market(s) shall be the one or more ADI markets in which the communities it serves are located until January 1, 2000, and the one or more DMA markets in which the communities it serves are located thereafter.

(5) **In the absence of any mandatory carriage complaint or market modification petition, cable operators in communities that shift from one market to another, due to the change in 1999-2000 from ADI to DMA, will be permitted to treat their systems as either in the new DMA market, or**

with respect to the specific stations carried prior to the market change from ADI to DMA, as in both the old ADI market and the new DMA market.

~~{NOTE to paragraph (c): For the 1996 must-carry/retransmission consent election, the ADI assignments specified in the 1991-1992 Television ADI Market Guide, available from the Arbitron Ratings Co., 9705 Patuxent Woods Drive, Columbia, MD, will apply. For the 1999 election, which becomes effective on January 1, 2000, DMA assignments specified in the 1997-98 DMA Market and Demographic Rank Report, available from Nielsen Media Research, 299 Park Avenue, New York, NY, shall be used. The applicable DMA list for the 2002 election will be the 2000-2001 list, etc}~~

(6) If the change from the ADI market definition to the DMA market definition in 1999-2000 results in the filing of a mandatory carriage complaint, any affected party may respond to that complaint by filing a market modification request pursuant to § 76.59, and these two actions may be jointly decided by the Commission.

2. Section 76.59 is amended as follows (additions shown here in bold, deletions shown here in strikeout):

§ 76.59 Modification of television markets.

(a) The Commission, following a written request from a broadcast station or a cable system, may deem that the television market of a particular commercial television broadcast station should include additional communities within its television market or exclude communities from such station's television market. In this respect, communities may be considered part of more than one television market.

(b) Such requests for modification of a television market shall be submitted in accordance with § 76.7, petitions for special relief, **and shall include the following evidence:**~~{-}~~

- (i) **A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.**
- (ii) **Grade B contour maps delineating the station's technical service area and showing the location of the cable system headends and communities in relation to the service areas.**

Note: Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit.

- (iii) **Available data on shopping and labor patterns in the local market;**
- (iv) **Television station programming information derived from station logs or the local edition of the television guide.**

- (v) **Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.**
 - (vi) **Published audience data for the relevant station showing its average all day audience (i.e., the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.**
- (c) Petitions for Special Relief to modify television markets that do not include such evidence shall be dismissed without prejudice and may be refiled at a later date with the appropriate filing fee.**
- (d) A cable operator shall not delete from carriage the signal of a commercial television station during the pendency of any proceeding pursuant to this section.